

Senate Commerce Committee Talking Points
“The Economy and Fraud:
Protecting Consumers During Downward Economic Times”

Thank you Mr. Chairman,

I appreciate your bringing attention to the problems we are seeing across the nation from scams and fraudulent activities borne directly from the current recession.

I will focus my comments today on what we in Missouri see as a particular threat to our citizens. The threat is this: companies and individuals who specialize in servicing, or preying upon, consumers who have significant credit card debt or unsustainable mortgage debt.

Foreclosure Consultants and Debt Settlement Firms claim to consumers they can cut principal in half, reduce monthly payments by hundreds of dollars, or eliminate debt altogether. And they claim that this process is virtually pain free.

All that is required of a consumer is a few thousand dollars in up-front fees so the companies may utilize their special “expertise.” Consumers are led to believe these settlement companies know the “secrets” of negotiating away a consumer’s debt.

Unfortunately, the real secret here is that these companies are offering a service that consumers could do for themselves, or that non-profit credit counselors will perform for free or a modest fee.

Moreover, one of the primary strategies relied upon by these debt settlement and mortgage companies is to convince consumers to stop all payments to and communications with his or her creditors, which of course leads to long-term damage to the consumer's credit rating and hundreds, if not thousands, of dollars in additional fees and debt.

In the end, to the extent that these companies provide any service at all, debt settlement and mortgage modification companies often offer a service that leaves a consumer no better off than where the consumer started.

Real people are being harmed by these companies. In Missouri, our Complaint Unit has seen a sharp increase in the volume of complaints related to **foreclosure rescue** scams:

In 2007 and 2008 combined, the Missouri AG's office had a total of 25 complaints. However, in just the first six months of this year, we've already received more than three times as many complaints as we saw in 2007 plus 2008, combined.

For **debt settlement** complaints, there has been a similar spike.

Consumers are being lured to these debt settlement and foreclosure consultants by outrageously deceptive advertising. And you will be interested to know that much of the advertising we are seeing seeks to co-opt the authority of the federal government.

Tens of thousands of direct mail pieces are distributed every day in Missouri offering debt settlement or foreclosure relief that purports to distribute money from the “Economic Stimulus Act of 2008 [or 2009].” These advertisements typically are replete with federal seals from the Department of Housing and Urban Development and the Federal Housing Administration, and logos that generally appear to be from the federal government. Eagles and flags abound on these advertisements.

In fact, I personally received an offer for enrollment in a “Payment Reduction Program” that, and I quote, was “created in conjunction with the Government Economic Stimulus Act of 2008.” The advertisement looked like it came from the federal government in that it purported to be a “Form 008-S” and the subject line read “HR 5140 Government Economic Stimulus Act of 2008.”

Unfortunately, too many consumers are fooled by these tactics. Those who are fooled are, no doubt, in the most desperate financial straights.

Missouri takes seriously its enforcement of laws enacted to address these issues: our Merchandising Practices Act, our Foreclosure Consultant Act, and more specifically, our state's ban on up-front fees.

Missouri's ban on up-front fees for foreclosure consultants and credit repair firms represents a particularly effective enforcement tool against scammers.

These services are often only profitable if the settlement company charges a large up-front fee. A ban on such fees not only discourages companies with suspect motives from entering the market, but makes proving a violation quite easy, thereby enabling swift injunctive relief.

So where do we go from here?

I would raise for your committee's consideration the following ideas.

First, most AG's would, I believe, support a federal ban on up-front fees related to mortgage rescue and debt settlement firms. In Missouri, we have seen so many examples of settlement companies that either never earn their fees or companies that simply pocket the upfront fee and then literally disappear.

Second, do not shy away from applying to the same up-front fee restrictions to lawyers and law firms that specialize in debt settlement work. Although a caveat may need to be drawn around certain bankruptcy court practices, what is good for the goose is nonetheless good for the gander.

Third, continue to provide the FTC with additional tools against settlement companies that claim the imprimatur of the federal government: the use of governmental symbols and logos in ads, the strong inferences that these solicitations come from HUD or the Federal Housing Administration, or the claim that the solicitation has been sent as a directly result of the economic stimulus act. These advertisements are gross deceptions and should be punished as such.

Finally, continue to restrict advertisements and solicitations around reverse mortgages and particularly sale-leaseback arrangements. In Missouri, advertisements for these products are increasingly frequent and increasingly bold. In most instances, they take the last remaining asset of an individual or family in desperate financial shape, and offer to liquidate it at a firesale price. Yet vulnerable consumers, most notably the elderly, have

great difficulty assessing the decision to liquidate their home late in life, and at such disadvantageous terms.

In my six months as Missouri's Attorney General, I have been continually amazed at the lengths crooks will go in an attempt to scam innocent people out of their money. However, in these tough times, with so many desperate consumers needing help, a perfect climate now exists for such financial scams to thrive.

I encourage your committee to consider bold and bright line enforcement measures, to make scammers using these fraudulent tactics think twice, and to give enforcement agencies, such as my own, the strongest tools possible to prosecute them.

Thank you for your time today.